

MARY JANE ASSOCIATES

IBLA 83-45

Decided June 27, 1983

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease application W-80485.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Rentals

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by allegations that submissions were timely mailed but thereafter damaged by the postal service and returned to appellant.

APPEARANCES: Peter E. Shimkus, managing partner, for appellant; B. B. Dean, Bonnie Brown Dean, Inc., second drawee.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Mary Jane Associates has appealed the September 14, 1982, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting its simultaneous oil and gas lease offer W-80485 for failure to timely remit rental payment and executed lease offers in accordance with 43 CFR 3112.4-1.

The appellant filed a simultaneous oil and gas lease application for parcel WY-179 in the May 1982 drawing. By decision (notice) dated August 6, 1982, and received by appellant on August 13, 1982, BLM notified appellant that it was the successful drawee for the parcel and that copies of the executed lease offer, stipulations, and the first year's rental payment must be returned to BLM within 30 days from receipt of the notice.

The appellant's statement of reasons alleges that upon receipt of BLM's notice the lease agreements were signed and on August 23, 1982, a certified check was drawn from its account to cover the rental payment. The appellant

states that on August 23 or 24, 1982, the envelope containing its lease agreements and check was mailed. Thereafter, the envelope was placed with the bulk mail of the Fidelity Group of Mutual Funds (Fidelity) from which it rents office space. During processing by the post office, appellant alleges, the envelope was shredded so that the BLM address could not be read. Appellant charges that the post office then mistakenly returned the envelope to Fidelity and that Fidelity did not return it to appellant until September 14, 1982. The BLM notice of August 6 required appellant to return the executed lease offers, stipulations, and rental payment on or before September 13, 1982, since the 30th day, September 12, was a Sunday.

Appellant's submission was not received by BLM until September 15, 1982.

[1] The requirements of 43 CFR 3112.4-1(a) are clear: "The executed lease agreement and the applicant's rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice." Section 3112.6-1(d) states: "The application of the first qualified applicant shall be rejected if an offer is not filed in accordance with § 3112.4-1 \* \* \*."

While the circumstances leading to the appellant's rejection are unfortunate, the regulations found at 43 CFR 3112.4-1 do not permit the consideration of excuses for failure to timely remit payment. Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975), aff'g the Board's decision in Robert D. Nininger, 16 IBLA 200 (1974); see also Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980).

Further, the Board has consistently held that it is the responsibility of the applicant to see that all filings are made in a timely manner. Any failure of the United States postal system to transmit the filings to BLM by the deadline does not excuse appellant's noncompliance with the regulations. One choosing the means of a document's delivery must accept responsibility for and bear the consequences of delay or nondelivery resulting from that method. See Elmer F. Brewster, 63 IBLA 51 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

James L. Burski  
Administrative Judge